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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,623	02/22/2002	Yoichiro Tanaka	219861USOPCT	7766
22850	7590	05/18/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MERCIER, MELISSA S				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
05/18/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

### Office Action Summary

**Application No.**

10/049,623

**Applicant(s)**

TANAKA ET AL.

**Examiner**

MELISSA S. MERCIER

**Art Unit**

1615

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8, 9, 27, 28 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-9, 27-28, 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Summary***

Receipt of Applicants Remarks and Amended Claims filed on February 19, 2009 is acknowledged. Claims 8-9, 27-28, 33-40 remain pending in this application.

### ***Maintained Rejections***

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-9, 27-28, and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimijima et al. (JP59046125) in view of Bayerlein et al. (US Patent 4,826,700).

Kimijima describes a microcapsule characterized by freezing, grinding, and powdering a core substance which comprises a liquid and powdery form that may be used to encapsulate cosmetics (page 2). The micro encapsulation is accomplished by freezing the core substance using the coolness of liquid nitrogen or the like and powdered in this state (page 5). The examiner has interpreted this to include freeze shattering. When the flow ability of the microcapsule needs to be enhanced, a small amount of a fine powder having an average particle size of about 100um or less can be added (page 5). It is additionally disclosed it is necessary to select a hydrophobic fine powder if the core substance is hydrophilic, and it is necessary to select a hydrophilic fine powder when the core substance is hydrophobic (page 5).

Example I discloses the use of Aerosil R972 as the coating powder (page 9). As noted in the specification, this particular powder is fumed silicic acid anhydride treated by a hydrophobicizing agent, DDS (page 8, lines 15-20), which meets the limitations of claims 37-40.

The core can be thickened or gelled by preadding a filler, thickener, gelling agent or the like (page 8).

Regarding claims 27 and 33, a fine powder having a particle size of one tenth or less is used (page 5).

Regarding claims 29 and 34, the resulting microcapsules are a pliable powder having a good flow ability even at room temperature, and the powder of the core substance is covered completely with a fine powder (page 7), which the examiner has interpreted to be powdered cores.

Kimijima does not disclose the gelling agent to thicken the core is agar, gelatin, carrageenan, gellan gum, or magnesium sodium silicate.

Bayerlein discloses the use of gelling agents used to achieve the desired consistency or viscosity. Polysaccharides, such as gelatin, and galactans, such as carrageenan and agar are disclosed as suitable gelling agents for cosmetic formulations (column 1, lines 8-15, 56-57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected any gellants or gel-forming agent with an expectation of success that any gelling agent known to be useful in the cosmetic would render similar results. Furthermore, there is no showing the particular gelling

agents have any unexpected results over what was already available in the prior art. In particular, Bayerlein discloses polysaccharides are water soluble, or strongly swellable substances, which in aqueous systems give colloidal, more or less highly viscous solutions or dispersions having plastic or pseudo-plastic flow, providing functional properties desired, such as thickening action, water-binding capability, stabilization of suspensions and emulsions in polyphase systems, and gel formation (column 1, lines 16-24).

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues:

\*Kimijima teaches a polymer coating on top of the hydrophobic particle coating of the gel cores.

While the Examiner concedes that Kimijima discloses a particular embodiment with a subsequent polymeric coating, he also discloses one without a polymeric coating, i.e. example 1 and claim 1. Therefore, he meets the limitations of the instant claims.

\*Kimijima describes Aerosil R792 as a suitable powder and Applicants table 1, footnote 3 indicates that this material is a coated hydrophobic particle.

It is unclear to the Examiner what the argument is asserting. The claims recite hydrophobic particles prepared by treating the surface of a hydrophilic particle with one or more hydrophobicizing agents. Aerosil R792 meets the limitations of the claim. Clarification is requested.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615